

Accusations of Assault Open Schneiderman to Possible Criminal Charges

Defense attorneys outlined the various misdemeanor and felony charges Schneiderman could be exposed to—if someone were to press charges.

By [Colby Hamilton](#) | May 08, 2018 at 02:18 PM



New York State Attorney General Eric Schneiderman. Photo: Rick Kopstein

Gov. Andrew Cuomo [appointed](#) Nassau County District Attorney Madeline Singas Tuesday night as special prosecutor and said she would take over separate investigations started earlier in the day by Manhattan District Attorney Cyrus Vance Jr. and the Suffolk County District Attorney's office of former New York Attorney General Eric Schneiderman.

In an article published in The New Yorker Monday night, four women with whom Schneiderman had romantic relationships or encounters [described nonconsensual slapping and choking](#), as well as verbal threatening.

Based on the accusations made by Michelle Manning Barish and Tanya Selvaratnam and two unidentified women, private defense attorney Jeremy Saland [wrote on Monday](#) evening that Schneiderman's actions represented potential criminal violations.

In the article, Barish describes Schneiderman slapping her hard, with an open hand, causing pain to her ear. She says she visited a doctor later who removed dry blood from that ear. These elements, Saland notes, appear to qualify for third-degree assault, a class-A misdemeanor.

Allegations of harassment by Schneiderman would subject him to other misdemeanor charges, according to Saland.

According to The New Yorker's article, Schneiderman made regular threatening statements to the women quoted in the story. Both Barish and Selvaratnam say Schneiderman threatened to kill them if either broke up with him. Saland said this opens Schneiderman up to potential aggravated harassment in the second degree, another class-A misdemeanor.

But more seriously, and with some dark irony considering his work on the issue as a state senator, Schneiderman could face felony second-degree strangulation—a class-D felony worth up to seven years in prison. At the very least, criminal obstruction of breathing or blood circulation class-A misdemeanor charges appear possible given the detailed choking allegations made by the women in the New Yorker article.

All of these potential charges remain just that until a case is made against Schneiderman—a possibility that is far from a certainty. Private defense attorney Michael Bachner, who served as an assistant in the Manhattan DA's Office as a young lawyer, noted that absent a complaint brought by one of the victims, a criminal case would require an unusually aggressive pursuit by Vance's office.

“So long as no one is going to swear out a complaint that Schneiderman engaged in that kind of conduct, I don't believe there's going to be a complaint,” Bachner said.

On Tuesday, a police source confirmed reports that the NYPD intends to launch its own investigation into the story's allegations, which will include speaking with the people identified in the article.

Still, even without a formal police referral of charges in the case to prosecutors, there is the possibility that the DA's Office could attempt to affirmatively subpoena witnesses to try and make a case against Schneiderman, but Bachner called the move “fairly rare.”

“In these types of cases, reluctant women are not the kind of witnesses prosecutors want to have,” he noted.

One of the big issues facing prosecutors mulling the situation is that of consent. Schneiderman's statement Tuesday acknowledged “role-playing” dynamics in his private sex life, leading some to see an acknowledgment of possible S&M-type sexual activity. If this is the case, the thought goes, Schneiderman would claim that his actions the women in the article claim were nonconsensual were, in fact, done with consent.

Private defense attorney Marc Fernich said that “as twisted as this guy sounds,” when he first heard about the allegations, “it really did strike me as role-playing, quasi-consensual role playing,” and that any criminal liability would turn on the scope of consent.

“It seems to me that it’s difficult to piece together what happened,” he said. “There are legal grounds to make a case. Consent will be the key issue.”

Fernich noted a number of other cases that turned on S&M-type behavior. Oliver Jovanovic, for example, [was accused](#) in 1996 in New York County Supreme Court of sadomasochistic torture. He was convicted in 1998, but saw that conviction overturned on appeal to the Appellate Division, First Department over possible exculpatory email evidence between the victim and defendant not being introduced properly. The retrial was later dropped.

Still, Fernich expressed skepticism any charges would ultimately be brought. While he said he found the allegations against Schneiderman, as an elected official, “substantially more troubling than a Harvey Weinstein,” he said he didn’t expect prosecutors to go after the former AG, who formally stepped down by midday Tuesday, after having announced his resignation on Monday night.

“These people tend to protect their own,” Fernich said.

In a statement, Saland said that either way, Schneiderman should be provided the same expectations as any potential defendant facing these kinds of allegations.

“It’s important to recognize not merely the crimes Schneiderman may be exposed to based on the statements in The New Yorker, but as inconvenient and politically expedient as it may be, he is entitled to the same presumption of innocence as anyone prosecuted by his former office,” Saland said. “The burden of innocence is never his but the people’s to prove beyond a reasonable doubt.”